

United States District Court
For the Northern District of California

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 LARRY TOTTEN, et al., No C-03-5030 - VRW
13 Plaintiffs, ORDER
14 v
15 BLAIR EXCAVATORS, INC, et al.,
16 Defendants.
17 _____/

18 On November 12, 2003, plaintiffs sued Blair Excavators,
19 Inc, and Victor Blair for damages and injunctive relief under the
20 Employee Retirement Income Security Act (ERISA), 29 USC §§ 1001 et
21 seq, alleging breach of a collective bargaining agreement. Doc #1.
22 On April 13, 2005, plaintiffs moved pursuant to FRCP 25(a)(1) to
23 substitute Deborah Jean Blair for defendant Victor Blair, who
24 apparently died shortly after being served in August 2004. Doc
25 ##24, 36-1. The court denied without prejudice plaintiffs' motion
26 to substitute due to a defect in service. Doc #40.
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1 Soon thereafter, plaintiffs again moved for "an order
2 substituting the surviving spouse, Deborah Jean Blair, in place of
3 deceased defendant, Victor A Blair, in the action filed herein."
4 Doc #42. The court found that plaintiffs' claims against Victor
5 Blair would survive against a properly substituted party, but
6 ordered plaintiffs to show cause why Deborah Blair is a proper
7 party for substitution under Rule 25(a)(1). Doc #45 at 4.

8 Under FRCP 25(a)(1), "[i]f a party dies and the claim is
9 not thereby extinguished, the court may order substitution of the
10 proper parties." The proper party for substitution is "the person
11 who has the legal right and authority to * * * defend against the
12 claims brought against the deceased party." James William Moore, 6
13 Moore's Federal Practice § 25.12[3] (Matthew Bender 3d ed 2006).
14 The movant must provide evidence that the party to be substituted
15 is the successor in interest or legal representative of the
16 decedent. See Hilao v Estate of Marcos, 103 F3d 762, 766 (9th Cir
17 1996) (applying Rule 25(a)(1) to legal representatives of the
18 deceased defendant's estate); Mallonee v Fahey, 200 F2d 918, 919
19 (9th Cir 1952) ("Rule 25(a)(1) applies only to the substitution of
20 legal representatives").

21 In response to the court's order to show cause,
22 plaintiffs submitted a memorandum supporting substitution,
23 accompanied by a declaration from plaintiffs' attorney, Bruce K
24 Leigh, and a series of exhibits. Doc ##47-1, 47-2. These exhibits
25 demonstrate that Deborah Blair is both a successor in interest and
26 legal representative of Victor Blair in satisfaction of FRCP
27 25(a)(1). Plaintiffs' assertion that Deborah Blair and Victor
28 Blair were married is supported by, *inter alia*, a private

1 investigator's report listing "Deborah" as Victor Blair's spouse
2 and a copy of Victor Allen Blair's death certificate listing
3 "Deborah Blair-wife" as the informant. Doc #47-2 Ex B, H.
4 Additionally, that Deborah Blair held an officer position at
5 defendant corporation is evidenced by a copy of a contractor's
6 license for Blair Excavators, Inc, listing her as an officer. Id
7 at Ex J.

8 The court finds that plaintiffs have demonstrated that
9 Deborah Blair is a proper party for substitution under Rule
10 25(a)(1). Accordingly, plaintiffs' motion to substitute Deborah
11 Blair in place of deceased defendant Victor Blair is GRANTED.

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13 IT IS SO ORDERED.

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16 VAUGHN R WALKER

17 United States District Chief Judge